

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA WHALEY,

Plaintiff-Appellee,

v

CIVIL SERVICE COMMISSION,

Defendant-Appellant.

UNPUBLISHED

May 30, 2013

No. 306353

Baraga Circuit Court

LC No. 11-006126-AA

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

On appeal from respondent Michigan Civil Service Commission (CSC), the circuit court ruled that the CSC's decision upholding the denial of petitioner's request for long-term disability (LTD) benefits was unauthorized by law and arbitrary and capricious. This Court granted the CSC's application for leave to appeal¹ and we now hold that the circuit court did not apply correct legal principles in ruling. Accordingly, we reverse the circuit court's ruling and reinstate the CSC's decision.

I. BASIC FACTS AND PROCEDURAL HISTORY

Petitioner was a registered nurse with the Michigan Department of Corrections until she went off work on November 28, 2006. On January 4, 2007, petitioner applied for long-term disability (LTD) benefits based on a diagnosis of major depressive disorder and generalized anxiety disorder. Petitioner also sought Social Security disability benefits. Petitioner was found disabled by the Social Security Administration (SSA), tasked with awarding Social Security disability benefits. Petitioner initially received LTD benefits under the State of Michigan LTD Plan. Her benefits were terminated by the third-party administrator (TPA) on May 11, 2009. After a lengthy administrative appeals process in which petitioner's request for LTD benefits was repeatedly rejected, the CSC issued a final decision that affirmed the denial of benefits. Petitioner appealed to the circuit court, which ruled that the CSC's decision was arbitrary and capricious and unauthorized by law. The CSC appeals to this Court by leave granted.

¹ *Whaley v Civil Serv Comm*, unpublished order of the Court of Appeals, issued March 30, 2012 (Docket No. 306353).

II. STANDARD OF REVIEW AND ANALYSIS

The standard of review applicable to a circuit court's review of a CSC decision is contained in Const 1963, art 6, § 28, which provides:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

In petitioner's case, no hearing was required. Therefore, "it is not proper for the circuit court or this Court to review evidentiary support of an administrative agency's determination." *Brandon Sch Dist v Mich Ed Special Servs Ass'n*, 191 Mich App 257, 263; 477 NW2d 138 (1991). "Judicial review is not de novo and is limited in scope to a determination whether the action of the agency was authorized by law." *Id.* Describing this standard, this Court recently stated:

Decisions not 'authorized by law' include those that violate a statute or the Constitution, those that are in excess of statutory authority or an agency's jurisdiction, those made upon unlawful procedures that result in material prejudice, and those that are arbitrary and capricious. A ruling is arbitrary and capricious when it lacks an adequate determining principle, when it reflects an absence of consideration or adjustment with references to principles, circumstances, or significance, or when it is freakish or whimsical. *Wescott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012) (citations omitted).

Petitioner represents the issue presented as a question of contract performance and seeks *de novo* review. The Michigan Supreme Court has stated that "any appeal from the Civil Service Commission lies in the appropriate circuit court, not the Court of Claims," thus implying that LTD benefits are not contractual. *Kroon-Harris v State of Michigan*, 477 Mich 988; 725 NW2d 467 (2007). This is only an implication, however, and the fundamental question of whether LTD benefits are contractual "remains open and needs to be answered." *Id.* (Kelly, J. dissenting).

The dispositive facts in this case are nearly identical to those in *Wescott*. *Id.* 298 Mich App at 160-161. The *Wescott* petitioner applied for non-duty disability retirement benefits under MCL 38.24, Social Security disability benefits, and long-term disability (LTD) benefits. *Id.* at 160. Petitioner was found disabled by the Social Security Administration (SSA) and the State Employees' Retirement Board, but the third-party administrator of the LTD plan denied

petitioner's application for LTD benefits, and the CSC affirmed the denial.² *Id.* Petitioner sought review of the CSC's denial, and the circuit court found that "the CSC's decision was arbitrary and capricious because the CSC failed to take into consideration or give any weight to the SSA's . . . conclusions that petitioner was indeed disabled." *Id.* at 162. The court reversed the CSC's decision and awarded petitioner LTD benefits. *Id.* at 161. This Court reversed the circuit court and reinstated the CSC's decision, explaining as follows:

Even though there are some similarities in the functioning and focus of all three agencies, the CSC, SSA, and SERSB are nonetheless independent governmental agencies that employ their own separate standards and criteria in determining whether an applicant qualifies for benefits. The agencies also have their own procedures, processes, rules, and regulations for gathering and analyzing information, for making determinations, and for challenging agency findings . . . Moreover, this very panel stated in *Davis v Dep't of Corrections*, 251 Mich App 372, 377; 651 NW2d 486 (2002), that "[t]he Civil Service Commission is an administrative agency that exists pursuant to the constitution and is vested with plenary and absolute authority to regulate the terms and conditions of employment in the civil service." *Id.* at 164.

Petitioner was found disabled by the SSA and denied LTD benefits by the CSC. Petitioner sought judicial review of the denial in the circuit court, which reversed the CSC's decision, asserting that the CSC erred in failing to give weight to the disability determination of the SSA. Petitioner relies on the same three federal cases relied on by the petitioner in *Wescott*.³ As the Court stated in *Wescott*, that those federal case opinions are not binding and, for the following reasons, are not persuasive:

A major emphasis in those opinions related to the conduct of plan administrators in encouraging, assisting, or requiring an applicant to pursue social security benefits, yet denying benefits to those same applicants under their own plans after social security benefits were awarded. Furthermore, those cases did not have the limitation regarding consideration of evidence that is applicable here, nor did they have to ponder the constitutional authority under which the CSC operates, Const 1963, art 11, § 5. *Wescott*, 298 Mich App at 164 n 5.

Wescott establishes and we agree that the CSC is not required to consider or give weight to the disability determinations of other governmental agencies. "Requiring the CSC, in the process of making a determination on a request for LTD benefits, to consider, weigh, discuss, or explain away disability decisions rendered by other state agencies and the SSA would improperly

² The State Employees' Retirement System Board (SERSB) is charged with administering MCL 38.24.

³ *DeLisle v Sun Life Assurance Co of Canada*, 558 F3d 440, 446 (CA 6, 2009); *Bennett v Kemper Nat'l Servs, Inc*, 514 F3d 547, 553 (CA 6, 2008); *Glenn v MetLife*, 461 F3d 660, 667 (CA 6, 2006). *Wescott*, 298 Mich App at 164-165 n 5.

encroach on the CSC's constitutional powers.” *Id.* at 164. To require the CSC to do so constitutes a violation of separation of powers by the circuit court. *Id.*

We reverse the trial court's ruling and reinstate the CSC's decision. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Elizabeth L. Gleicher

/s/ Mark T. Boonstra